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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/361,963	07/28/99	SATO	Y 35.C10695DIV

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EXAMINER	
GERIKE, M	
ART UNIT	PAPER NUMBER
2879	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/361,963	Applicant(s) Yasue Sato et al.
Examiner Matthew Gerike	Group Art Unit 2879

 Responsive to communication(s) filed on Jul 28, 1999 This action is **FINAL**. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 9-15 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
 Claim(s) _____ is/are allowed.
 Claim(s) 9-15 is/are rejected.
 Claim(s) _____ is/are objected to.
 Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
 The drawing(s) filed on _____ is/are objected to by the Examiner.
 The proposed drawing correction, filed on _____ is approved disapproved.
 The specification is objected to by the Examiner.
 The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 All Some* None of the CERTIFIED copies of the priority documents have been
 received.
 received in Application No. (Series Code/Serial Number) 08/479,372.
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892
 Information Disclosure Statement(s), PTO-1449, Paper No(s). 3, 4
 Interview Summary, PTO-413
 Notice of Draftsperson's Patent Drawing Review, PTO-948
 Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The examiner suggests, --Image Forming Apparatus Having Vent Tubes and Getter--.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 9-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,952,775. Although some of the conflicting claims are not identical, they are not patentably distinct from each other because all of the claimed subject matter of the application is fully disclosed and covered in the patent.

The following table shows the common subject matter of the application and patent.

Application 09/361,963	Patent #5,952,775	Discussion of Differences
claim 9	claim 1 and column 15, line 24-column 16, line 19.	In the Patent, the first plate is referred to as a rear plate, the second plated is referred to as a face plate, the getter is disclosed within the specification.
claim 10	claim 1 and column 15, line 24-column 16, line 19.	No differences, same subject matter
claim 11	claim 1 and column 15, line 24-column 16, line 19.	No differences, same subject matter
claim 12	claim 1 and column 15, line 24-column 16, line 19. Specifically column 15, lines 51-52.	No differences, same subject matter
claim 13	claim 1 and column 15, line 24-column 16, line 19.	No differences, same subject matter
claim 14	claim 1 and column 15, line 24-column 16, line 19.	Surface conduction electron emitting devices are also known as field emission type electron emitting devices. Also, all charged conductors produce an electric field.
claim 15	claim 1 and column 15, line 24-column 16, line 19, specifically column 15, lines 31-32.	No differences, same subject matter

There is no apparent reason why applicant was prevented from presenting the claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 9: The use of the term "vicinity" renders the claim vague and indefinite. The examiner cannot ascertain the intended position of the getter as it pertains to the interior or exterior of the apparatus. Clarification or correction is requested.

With respect to claim 13: The examiner considers the claim vague and indefinite. The examiner cannot ascertain the intended meaning of the phrase, "over

from end to end of a region". The examiner cannot ascertain the intended meaning of claim 13 so it has not been further treated on its merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(a) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banno et al. (U.S. 5,525,861) further in view of Jones et al. (U.S. 5,663,608).

Banno discloses an image forming apparatus (figure 3) comprising a first plate (#1, substrate) including electron emitting devices (#2, field emission type electron emitting device), a second plate (#9, rear plate), an outer frame (#5 & #6, outer frames) hermetically surrounding a space between the first plate and the second plate and a getter (#7, getter), as recited in applicant's claim 9, yet fails to disclose a plurality of spacers.

Jones discloses a field emission display device with a spacer (#98, spacer assembly). Hence it would have been obvious to one skilled in the art to combine a plurality of spacers of Jones with the apparatus of Banno to construct an image forming apparatus with high resolution due to lessened impurities absorbed by the getters, which is resistant to implosion.

Banno discloses an image forming apparatus wherein the getter is disposed outside a region in which the electron emitting devices are formed (see figure 3) as recited in applicant's claim 10.

With respect to claim 11, Banno discloses the claimed invention except for the spacers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to position the getter within a region surrounded by the imaginary extension of two of the spacers, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Banno discloses an image forming apparatus wherein the getter is a ring shaped getter (column 6, line 38), as recited in applicant's claim 12.

Banno discloses an image forming apparatus wherein the electron emitting devices are field emission type electron emitting devices (see figure 2, column 5, lines 36-56) as recited in applicant's claim 14.

Banno discloses an image forming apparatus wherein the electron emitting devices are surface conduction electron emitting devices (see figure 5A and 5B, column 7, lines 24-25) as recited in applicant's claim 15.

Other Prior Art Cited

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cho et al. (U.S. 5,977,706), Kato et al. (U.S. 5,688,708) and Pepi (U.S. 5,519,284).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Gerike whose telephone number is (703) 308-8991. The examiner can normally be reached on Monday - Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimeshkumar Patel, can be reached on (703) 305-4794. The fax phone number for this Group is (703) 305-3594.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.



Matthew J. Gerike
Patent Examiner
Art Unit 2879



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PRIMARY EXAMINER